

INDEX OF STATE COURT DOCUMENTS

DESCRIPTION	DATE
Case Summary (<i>i.e.</i> , docket sheet)	Prepared as of August 17, 2017
Plaintiff's Original Petition	Filed July 21, 2017
Justice Court Civil Information Sheet	Filed July 21, 2017
Justice Court Citation – Zwicker & Associates, P.C.	Issued August 1, 2017
Completed Officer's Return on Justice Court Citation – Zwicker & Associates, P.C.	Served August 2, 2017 and Filed August 3, 2017
Defendants' Original Answer	Filed August 9, 2017

CASE SUMMARY**CASE NO. 2SC-17-0170****Bryan Pierce vs. Zwicker & Associates, P.C.**§
§
§
§Location: JP2
Judicial Officer: Staudt, Edna
Filed on: 07/21/2017**CASE INFORMATION**

Case Type: Small Claims

Case 08/09/2017 Answer Filed
Status:**DATE****CASE ASSIGNMENT****Current Case Assignment**

Case Number 2SC-17-0170
 Court JP2
 Date Assigned 07/21/2017
 Judicial Officer Staudt, Edna

PARTY INFORMATION**Plaintiff****Pierce, Bryan**
Lead Attorneys
Zimmer, Robert
Retained
 512-434-0306(W)
Defendant**Zwicker & Associates, P.C.**
Newburger, Manuel H
Retained
 512-649-4022(W)
DATE**EVENTS & ORDERS OF THE COURT****INDEX**

07/21/2017	Plaintiff's Original Petition	
07/21/2017	E-Filed Initiating Document <i>Plaintiff's Original Complaint</i>	
08/01/2017	Citation	
08/01/2017	Citation Zwicker & Associates, P.C. Served: 08/02/2017	
08/02/2017	Answer Due	
08/09/2017	Answer Received Party: Defendant Zwicker & Associates, P.C.	

DATE**FINANCIAL INFORMATION****Defendant Zwicker & Associates, P.C.**

Total Charges	2.00
Total Payments and Credits	2.00
Balance Due as of 8/17/2017	0.00

Plaintiff Pierce, Bryan

Total Charges	135.00
Total Payments and Credits	135.00

CASE SUMMARY
CASE NO. 2SC-17-0170

Balance Due as of 8/17/2017

0.00

NO. 2SC-17-0170

BRYAN PIERCE, § IN THE JUSTICE COURT
Plaintiff §
VS. § PRECINCT NO. 2
ZWICKER & ASSOCIATES, P.C. § WILLIAMSON COUNTY, TEXAS
Defendant §
§
§
§

PLAINTIFF'S ORIGINAL PETITION

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW PLAINTIFF Bryan Pierce ("Pierce"), and files this, his Original Petition, complaining of DEFENDANT Zwicker & Associates, P.C. ("Zwicker"), and for causes of action would respectfully show this Honorable Court the following:

PARTIES

Plaintiff Bryan Pierce is a resident of Travis County, Texas;

Defendant Zwicker & Associates, P.C., is a professional corporation doing business in Texas, and who may be served via its counsel, Mildred Anaele, Esq., Zwicker & Associates, P.C., One Chisholm Trail, Suite 301, Round Rock, TX 78681.

VENUE AND JURISDICTION

1. Venue is proper in this Court because Williamson County, Texas is where events giving rise to Pierce's claims occurred (see Texas Civil Practices & Remedies Code §§ 15.002(a)).

2. The amount in controversy is within the jurisdictional limits of this Court, i.e., \$10,000.00.

FACTUAL ALLEGATIONS

3. At all times relevant to this claim, Pierce was a “consumer” as that term is defined in the Fair Debt Collection Practices Act (“FDCPA”), 15 U.S.C. § 1692a(3), and the Texas Debt Collection Act (“TDCA”), Tex Fin. Code § 392.001(1).
4. At all times relevant to this claim, Zwicker was both a “debt collector” and a “third-party debt collector” as those terms are defined in the TDCA§ 392.001(6) and (7), respectively, and a “debt collector” as that term is defined in the FDCPA § 1692a(6).
5. On or about May 5, 2017, Zwicker sued Pierce on behalf of American Express (“Amex”) to collect on an alleged credit card debt, account ending in 008 (the “alleged debt” or “debt”).
6. The Zwicker / Amex lawsuit against Pierce is captioned Case No. 17-0705-CC4, in the Williamson County Court at Law #4 (“the collection lawsuit”).
7. On or about May 19, 2017, Pierce disputed the amount of the alleged debt in his Answer to the collection lawsuit.
8. Zwicker did not respond to Pierce’s dispute within 30 days of receiving it.
9. On or about June 1, 2017, Pierce retained the undersigned consumer protection attorney.
10. On or about July 13, 2017 (nearly two months after receiving Pierce’s dispute), Zwicker telephoned Pierce’s attorney and left a voicemail attempting to collect the alleged debt from Pierce.

11. The voicemail stated, in relevant part, "My name is Beth Chevelle, a non-attorney collector from the law firm of Zwicker and Associates P.C. This is an attempt to collect a debt. Any information obtained be used for that purpose. We do request that you please contact me Beth Chevelle out at 1-800-594-7323 ext. 5138 again it's 1-800-594-7323 ext. 5138."

12. Zwicker's Original Complaint in the collection lawsuit falsely stated that Pierce refused to pay the alleged debt (Complaint, ¶7).

13. As of the date of this Complaint (July 20), Zwicker had neither furnished Pierce nor his attorney with a written response to Pierce's May 19 dispute.

CAUSES OF ACTION

COUNT I

VIOLATION OF THE TEXAS DEBT COLLECTION ACT ("TDCA"), TEX. FIN. CODE §392 *et seq.*

1. Pierce incorporates the preceding paragraphs as if set forth at length.
2. Zwicker violated the TDCA §392.202 failing to furnish Pierce with a written response to his May 19, 2017 dispute within 30 days of receipt, as required by the statute.
3. Zwicker violated the TDCA § 392.304(a)(19) because Zwicker's Original Complaint for the collection lawsuit falsely stated that Pierce refused to pay the alleged debt (Complaint, ¶7).
4. As a result of Zwicker's violations of the TDCA § 392.202, Pierce is entitled to an order directing Zwicker to permanently cease collection activity on the alleged debt, pursuant to TDCA §392.403(a)(1); statutory damages of \$100.00 pursuant to the TDCA §392.403(e); and attorney fees pursuant to § 392.403(c).

COUNT II

VIOLATIONS OF THE FAIR DEBT COLLECTION PRACTICES ACT, 15. U.S.C. § 1692 *et seq.*

5. Pierce incorporates the preceding paragraphs as if set forth at length.
6. Zwicker violated the FDCPA § 1692e(10) because Zwicker's Original Complaint for the collection lawsuit falsely stated that Pierce refused to pay the alleged debt.
7. Zwicker violated the FDCPA § 1692g(b) because Zwicker continued collection efforts on the alleged debt even though Zwicker received Pierce's May 19 dispute and ignored it.
8. As a result of Zwicker's violations of the FDCPA, Pierce is entitled to statutory damages of \$1,000.00, and an award of attorney fees and costs, per FDCPA § 1692k(a).

JURY DEMAND

9. Pierce requests a jury trial.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Bryan Pierce prays that this Court:

- a. award Pierce statutory damages of \$100.00, actual damages according to proof; and attorney fees and costs of court, per TDCA §392.403;
- b. enter an order enjoining Zwicker from engaging in any further collection activities on this alleged debt as to Pierce, the injunction being authorized by the TDCA §392.403;
- c. award Pierce \$1,000.00 in statutory damages, and attorney fees and costs of court, per the FDPCA § 1692k(a).
- d. award Pierce any other relief to which this Court may find him entitled in law or in equity.

Respectfully Submitted,

Zimmer & Associates
707 West Tenth Street
Austin, Texas 78701
Telephone: (512) 434-0306
Facsimile: (310) 943-6954

/s/ Robert Zimmer
By: Robert Zimmer
State Bar No. 24098662
zimmerlawTX@gmail.com

**ATTORNEY FOR PLAINTIFF,
BRYAN PIERCE**

CAUSE NUMBER (FOR CLERK USE ONLY): _____

STYLED Bryan Pierce v. Zwicker & Associates, P.C.

(e.g., John Smith v. All American Insurance Co; In re Mary Ann Jones; In the Matter of the Estate of George Jackson)

A civil case information sheet must be completed and submitted when an original petition is filed to initiate a new suit. The information should be the best available at the time of filing. This sheet, required by Rule of Civil Procedure 502, is intended to collect information that will be used for statistical purposes only. It neither replaces nor supplements the filings or service of pleading or other documents as required by law or rule. The sheet does not constitute a discovery request, response, or supplementation, and it is not admissible at trial.

1. Contact information for person completing case information sheet:		2. Names of parties in case:
Name: <u>Robert Zimmer, Esq.</u>	Telephone: <u>512-434-0306</u>	Plaintiff(s): <u>Bryan Pierce</u>
Address: <u>707 West Tenth Street</u>	Fax: <u>310-943-6954</u>	Defendant(s): <u>Zwicker & Associates, P.C.</u>
City/State/Zip: <u>Austin, TX 78701</u>	State Bar No: <u>24098662</u>	[Attach additional page as necessary to list all parties]
Email: <u>zimmerlawTX@gmail.com</u>		
Signature: 		
3. Indicate case type, or identify the most important issue in the case (select only 1):		
<input type="checkbox"/> Debt Claim: A debt claim case is a lawsuit brought to recover a debt by an assignee of a claim, a debt collector or collection agency, a financial institution, or a person or entity primarily engaged in the business of lending money at interest. The claim can be for no more than \$10,000, excluding statutory interest and court costs but including attorney fees, if any.		<input type="checkbox"/> Eviction: An eviction case is a lawsuit brought to recover possession of real property, often by a landlord against a tenant. A claim for rent may be joined with an eviction case if the amount of rent due and unpaid is not more than \$10,000, excluding statutory interest and court costs but including attorney fees, if any.
<input type="checkbox"/> Repair and Remedy: A repair and remedy case is a lawsuit filed by a residential tenant under Chapter 92, Subchapter B of the Texas Property Code to enforce the landlord's duty to repair or remedy a condition materially affecting the physical health or safety of an ordinary tenant. The relief sought can be for no more than \$10,000, excluding statutory interest and court costs but including attorney fees, if any.		<input checked="" type="checkbox"/> Small Claims: A small claims case is a lawsuit brought for the recovery of money damages, civil penalties, personal property, or other relief allowed by law. The claim can be for no more than \$10,000, excluding statutory interest and court costs but including attorney fees, if any.

JUSTICE COURT CITIGATION

BRYAN PIERCE: *Plaintiff*

IN THE JUSTICE COURT
PRECINCT TWO
WILLIAMSON COUNTY

VS

ZWICKER & ASSOCIATES, P.C. : *Defendant*

SERVE: MILDRED ANAELE, ESQ. 1 CHISHOLM TRAIL SUITE 301 ROUND ROCK TX 78681
CASE NUMBER: 2SC-17-0170

THE STATE OF TEXAS
TO THE DEFENDANT ZWICKER & ASSOCIATES, P.C.,

You have been sued. You may employ an attorney to help you in defending against this lawsuit. But you are not required to employ an attorney. You or your attorney must file a written answer with the court. Your answer is due by the end of the 14th day after the day you were served with these papers. If the 14th day is a Saturday, Sunday, or legal holiday, your answer is due by the end of the first day following the 14th day that is not a Saturday, Sunday, or legal holiday. Do not ignore these papers. If you do not file a written answer by the due date, a default judgment may be taken against you. For further information, consult Part V of the Texas Rules of Civil Procedure, which is available online and also at the court listed on this citation.

SEE ATTACHED PETITION

The attached Petition was filed with the court on 07/21/2017.

Said demand or claim being fully covered and set out in copy of said "PLAINTIFF'S ORIGINAL PETITION", which is attached hereto and made a part hereof by reference.

The DEFENDANT herein will take notice of all Pleadings now on file herein, or which may hereafter be filed by the Plaintiff and/or any Intervener. Said Plaintiff has reserved the right to plead more fully prior to, at the time of, and during the trial hereof.

WHEREFORE, said Plaintiff prays judgment on said demand and claim referred to, for all writs and orders of the Court applicable, for all costs of Court incurred herein, and for all general and special relief to which Plaintiff may prove to be justly entitled.

YOU ARE HEREBY ORDERED TO APPEAR BEFORE:

EDNA STAUDT, JUSTICE OF THE PEACE, PRECINCT 2, WILLIAMSON COUNTY, TEXAS
350 Discovery Blvd. #204, Cedar Park, Texas 78613
Phone (512) 260-4210 Fax (512) 260-4215

ISSUED AND GIVEN UNDER MY HAND OFFICIALLY ON THIS THE 1ST DAY OF AUGUST, 2017.



Justice Court Clerk
Justice of the Peace
Pct 2 Williamson County

Judge / Clerk

H Clark

Plaintiff: Bryan Pierce

Plaintiff's Attorney/Agent: ROBERT ZIMMER
707 W 10TH STREET
AUSTIN TX 78701
512-434-0306

OFFICER'S RETURN

CAME TO HAND THIS _____ day of _____ A.D. 20_____. _____. O'clock _____.m. and executed this _____ day of _____ A.D. 20_____. at _____. o'clock _____.m. by delivering to the above named Defendant, by serving _____ in person a true copy of this citation and Petition or by mailing and posting a copy of the citation to the Defendant's door. The address where the defendant was served was _____.

Not served to the Defendant for the reasons set out: _____

Constable/Deputy Constable, Precinct Two
Williamson County, Texas

JUSTICE COURT CITATION

 ORIGINAL

IN THE JUSTICE COURT

PRECINCT TWO

WILLIAMSON COUNTY JP2

RECEIVED
JULY 03 2017

WILLIAMSON COUNTY JP2

BRYAN PIERCE: Plaintiff

VS

ZWICKER & ASSOCIATES, P.C. : Defendant

SERVE: MILDRED ANAELE, ESQ. 1 CHISHOLM TRAIL SUITE 301 ROUND ROCK TX 78681
CASE NUMBER: 2SC-17-0170THE STATE OF TEXAS
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EDNA STAUDT, JUSTICE OF THE PEACE, PRECINCT 2, WILLIAMSON COUNTY, TEXAS
 350 Discovery Blvd. #204, Cedar Park, Texas 78613
 Phone (512) 260-4210 Fax (512) 260-4215

ISSUED AND GIVEN UNDER MY HAND OFFICIALLY ON THIS THE 1ST DAY OF AUGUST, 2017.



Justice Court Clerk
 Justice of the Peace
 Pct 2 Williamson County

Judge / Clerk

Plaintiff: Bryan Pierce

Plaintiff's Attorney/Agent: ROBERT ZIMMER
 707 W 10TH STREET
 AUSTIN TX 78701
 512-434-0306

2017 09/04 02 AUG 2017 OFFICER'S RETURN
 CAME TO HAND THIS _____ day of _____ A.D. 20_____, O'clock _____ m. and executed this 2nd day of August A.D.
 2017 at 1653 o'clock p.m. by delivering to the above named Defendant, by serving Mildred Anaele
 in person a true copy of this citation and Petition or by mailing and posting a copy of the citation to the Defendant's door. The address where the defendant was served
 was 1 Ste 302 Chisholm Trail Rd Round Rock Tx 78681

Not served to the Defendant for the reasons set out:

Rick Coffman
 Constable Pct 2
 Williamson County
 350 Discovery Blvd, #205
 Cedar Park, TX 78613

Constable/Deputy Constable, Precinct Two
 Williamson County, Texas

NO. **2SC-17-0170**

BRYAN PIERCE, § IN THE JUSTICE COURT
Plaintiff, §
§
v. § PRECINCT TWO
§
ZWICKER & ASSOCIATES, P.C., §
Defendant. § WILLIAMSON COUNTY, TEXAS

DEFENDANT'S ORIGINAL ANSWER

TO THE HONORABLE JUDGE OF SAID COURT:

Defendant ZWICKER & ASSOCIATES, P.C. answers Plaintiff's Original Petition as follows:

1. Defendant is a corporation without Social Security Numbers or driver's license numbers.
2. Defendant generally denies the allegations contained in Plaintiff's Original Petition filed in this cause and demands strict proof thereof by a preponderance of the evidence.
3. As further answer, Defendant asserts the affirmative defense of litigation immunity.
4. As further answer, Defendant asserts that its conduct was absolutely privileged.
5. As further answer, Defendant asserts that Plaintiff's claims are barred by the Petition Clause of the First Amendment to the Constitution of the United States.

6. As further answer, Defendant asserts that Plaintiff's claims are barred by the Open Courts provision of the Texas Constitution.

7. As further answer, Defendant asserts that Plaintiff's claims are barred by the *Noerr-Pennington* doctrine.

8. As further answer, Defendant asserts that Plaintiff's claims are barred by 15 U.S.C. § 1681t, which preempts Plaintiff's TDCA claims. The TDCA section on which Plaintiff relies is invalid and unenforceable.

9. Defendant further asserts the defense of failure to mitigate.

ATTORNEY'S FEES

10. Defendant asserts that this action has been brought in bad faith and for the purpose of harassment. Pursuant to 15 U.S.C. § 1692k(a)(3) and Tex. Fin. Code § 392.403(c), Defendant is entitled to recover from Plaintiff its reasonable attorney's fees and costs incurred in defending this action.

WHEREFORE, PREMIES CONSIDERED, Defendant prays that Plaintiff take nothing in this action. Defendant further prays that the Court award to it all of the fees and costs incurred in defense of this action, together with all such other relief as to which it may be justly entitled.

Respectfully submitted,

BARRON & NEWURGER, PC

By: /s/ Manuel H. Newburger
Manuel H. Newburger
State Bar No. 14946500
7320 N. Mopac Expwy, Suite 400
Austin, Texas 78731
Tel (512) 649-4022
Fax (512) 279-0310
mnewburger@bn-lawyers.com
ATTORNEYS FOR DEFENDANT

CERTIFICATE OF SERVICE

I certify that on August 9, 2017, a true and correct copy of the foregoing has been served by electronic transmission on Defendant by serving his attorney of record, Robert Zimmer, Zimmer & Associates, 707 West Tenth Street, Austin, Texas 78701 at zimmerlawTX@gmail.com, with copy by U.S. First Class Mail, postage prepaid.

/s/ Manuel H. Newburger
Manuel H. Newburger